

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES MATHIS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

Case No. C06-5651RJB

ORDER ADOPTING
REPORT AND
RECOMMENDATION
AND DISMISSING CASE

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Kelley Arnold. Dkt. 28. The Court has considered the Report and Recommendation, objections to the Report and Recommendation, if any, and the remainder of the file herein.

On March 13, 2007, Plaintiff filed, pro se, a complaint pursuant to 42 U.S.C. § 1983. Dkt. 12. Plaintiff alleged he uses prayer oils in the practice of his religion. *Id.* Plaintiff alleges that Defendants improperly confiscated his prayer oils. *Id.*

On December 13, 2007, Defendants moved for Summary Judgment, arguing that the case should be dismissed because Plaintiff failed to exhaust his administrative remedies. Dkt. 26. In accordance with *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), Defendants also filed a separate pleading entitled "Summary Judgment Notice - Warning." Dkt. 27. This pleading explained that the case would be dismissed if the summary judgment motion was granted, and Plaintiff's right to respond to the motion with counter-affidavits and other responsive evidence. *Id.*; *See also Solis v. County of Los Angeles*, 2008 WL 223276 (9th Cir. January 29, 2008)(holding that district court or summary judgment movant may provide

1 prisoner with a warning of the consequences of a summary judgment motion and the plaintiff's right to file
2 counter-affidavits and other responsive evidence). Plaintiff failed to respond to the Motion for Summary
3 Judgment, or file objections to the Report and Recommendation.

4 The Report and Recommendation (Dkt. 28) should be adopted. Plaintiff's Complaint (Dkt. 12)
5 should be dismissed without prejudice due to Plaintiff's failure to exhaust his administrative remedies.

6 Therefore, it is **ORDERED** that:

- 7 • The Report and Recommendation (Dkt. 28) is **ADOPTED**;
8 • Plaintiff's Complaint (Dkt. 12) is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust
9 administrative remedies; and
10 • The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge J. Kelley
11 Arnold, all counsel of record, and to any party appearing *pro se* at said party's last known address.

12 DATED this 19th day of February, 2008.

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15 ROBERT J. BRYAN
16 United States District Judge
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